

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Paul E Jozwiak,

10 Plaintiff,

11 v.

12 Raytheon Missile Systems, et al.,

13 Defendants.
14

No. CV-20-00039-TUC-DCB

ORDER

15 Plaintiff filed this case on January 24, 2020 and sought leave to proceed *in forma*
16 *pauperis*. The Court denied the request for *in forma pauperis* status and dismissed the
17 Complaint *sua sponte*, with leave to amend. (Order (Doc. 9)). In the Order, the Court
18 explained that Plaintiff's filings were not properly captioned as required by LRCiv.
19 7.1(a)(3)(B) because the document title page reflected "Verified Complaint" with the true
20 nature of the document reflected on the second page of the document. *Id.* at 1. The Court
21 explained that the title used on page two should instead be on the title page. Plaintiff
22 continues to file documents miscaptioned as "Verified Complaint." *See* Verified Complaint
23 (Doc. 41)¹ (caption on title page of document responding to Court's Order for Plaintiff to
24 show cause why case should not be dismissed for lack of service). A complaint is a unique
25 pleading document filed for the exclusive purpose of setting out the facts and claims
26 alleged in a case; upon the filing of a complaint, a case is opened. There is only one

27 ¹ Plaintiff is also confused regarding the proper case number. He shall put only one case
28 number on the title page, which should be identical to the one reflected on this Order's title
page.

1 complaint in a case, unless it is amended. Then, the amended complaint, like Plaintiff's
2 First Amended Complaint (Doc. 13), becomes the pleading in the case and must be served
3 with the Summons on the Defendants. Fed. R. Civ. P. 4(c).

4 On May 8, 2020, the Plaintiff filed the First Amended Complaint and on May 13,
5 2020, he paid the filing fee. The Court ordered the Plaintiff to serve the Summons and a
6 copy of the First Amended Complaint, pursuant to Fed. R. C. P. 4. (Order (Doc. 14)).

7 July 6, 2020, the Plaintiff sought leave to serve the Defendants by alternative means
8 by publication or email. The Court denied that request because he made no showing for
9 why he could not comply with Rule 4 and gave the Plaintiff 30 more days to accomplish
10 service pursuant to Rule 4. (Order (Doc. 18)). On September 16, 2020, the Court issued an
11 Order that the case was subject to dismissal unless the Plaintiff showed cause why he had
12 failed to serve the Defendants. (Doc. 19.)

13 On September 25, 2020, the Plaintiff filed proofs of service (Docs. 20-39) and the
14 Verified Complaint, which the Clerk of the Court docketed as a Notice (Doc. 41), which
15 responds to the Court's Order to Show Cause. Plaintiff has served the Defendants by mail
16 and publication. The Court denied the Plaintiff leave to serve Defendants alternatively on
17 July 6, 2020. From the proofs of service, it appears that in June he served the Defendants,
18 alternatively, without leave of the Court. He mailed the Summons and Complaint,² and a
19 Requests to Waive Service, to Defendants' places of employment, delivered them to the
20 mail clerks at their places of employment, and left them on doorsteps or in mail boxes at
21 their homes. He also, alternatively, served them by publication. The problem is that he did
22 not include in the service materials an Order of the Court authorizing these alternative
23 means of service. Consequently, the Defendants were not required to respond.³

24 The Court has issued several Orders to direct the Plaintiff regarding the requisites
25 for serving his First Amended Complaint, which he has ignored. The Court has instructed

26
27 ² The proofs of service say the Complaint was served; the Plaintiff is required to serve the
First Amended Complaint, not the Complaint.

28 ³ The mailings were sufficient to deliver the Requests to Waive Service to the Defendants,
and it appears that there were no waivers. Consequently, service must be completed
pursuant to Fed. R. Civ. P. 4(e) and (h).

1 Plaintiff on how to caption his title pages for documents he files in this case, which he also
2 has ignored. The Court shall afford the Plaintiff one more chance to properly serve the
3 Defendants. If this Order is ignored, the case shall be dismissed for lack of service and
4 failure to comply with directives of the Court.

5 Rule 4 of the Federal Rules of Civil Procedure allow the Plaintiff to follow state law
6 for service. Rule 4.1 of the Arizona Rules of Civil Procedure allows for alternative service
7 by mail, with permission from the Court. Ariz. R. Civ. P.4.1(k). Service by mail is an
8 alternative to personal service, which requires the plaintiff to give the summons and
9 complaint directly to the defendant or person over 18 residing with the defendant. The goal
10 of service is to ensure actual notice of the action's commencement and that a response is
11 required. The Court only allows the alternative service by mail because of the COVID 19
12 pandemic, and it shall be performed pursuant to the directives given below or this action
13 shall be dismissed without further notice to the Plaintiff.

14 To serve any Defendant, who the Plaintiff is suing in an individual capacity,
15 meaning he seeks to hold that Defendant personally liable, Plaintiff shall mail a Summons,
16 with a copy of the First Amended Complaint (Doc. 13), AND A COPY OF THIS ORDER,
17 to the individual's last known home address. To serve Defendants, who acted in an official
18 capacity, the Plaintiff shall mail a Summons, with a copy of the First Amended Complaint,
19 AND A COPY OF THIS ORDER, to their last known place of employment. He may mail
20 the same service materials to Raytheon and Met Life at their corporate headquarters,
21 addressed attention Legal Department. The mailings must be sent by certified mail or other
22 source of mail which requires a signature proof of service. Plaintiff shall file the proofs of
23 service with the Court and certify that the documents served were the Summons, First
24 Amended Complaint (Doc. 13), and a copy of this Order.

25 **Accordingly,**

26 **IT IS ORDERED** that the Plaintiff is granted one last extension of time to serve
27 the Defendants.

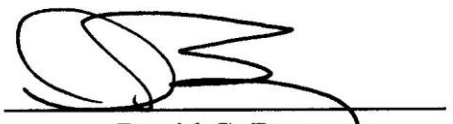
28 **IT IS FURTHER ORDERED** that the Court approves alternative service on

1 Defendants by certified mail or other source of mail which requires a signature proof of
2 service. Any Defendant being so served shall file a responsive pleading.

3 **IT IS FURTHER ORDERED** that within 30 days of the filing date of this Order,
4 the Plaintiff shall fully comply with the directives of this Order, including obtaining new
5 Summons from the Clerk of the Court, mailing the service materials as described herein,
6 and filing the proofs of service. NO FURTHER EXTENSIONS SHALL BE GRANTED.
7 Failure to comply with this Order for serving the Defendants within the time allowed shall
8 result in dismissal of this action, without further notice to the Plaintiff.

9 Dated this 14th day of October, 2020.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



David C. Bury
United States District Judge